
Judiciary Committee

HB 2716

Title: An act relating to reviewing appeals.

Brief Description: Addressing the review of appeals in criminal cases.

Sponsors: Representatives Goodman, Hurst and VanDeWege.

Brief Summary of Bill

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| <ul style="list-style-type: none">• Allows the State to appeal, as a matter of right, the suppression or exclusion of evidence if (1) the evidence is a substantial proof of a fact material in the proceeding, and (2) the prosecution certifies to the trial court that the appeal is not taken for purpose of delay. |
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Hearing Date: 1/29/08

Staff: Lara Zarowsky (786-7123).

Background:

Double Jeopardy

Jeopardy refers to the danger or hazard to a defendant of being found guilty and subsequently punished for a criminal offense. Jeopardy attaches in a bench trial when the first witness is sworn in. Jeopardy attaches in a jury trial when the jury has been impaneled and taken the oath. After jeopardy attaches, the defendant cannot be tried again by the same sovereign for the same crime without violating the double jeopardy clauses of the federal and state constitutions.

Under the doctrine of dual sovereignty, there is no constitutional prohibition against successive prosecutions for the same crime by different sovereigns. For example, a Washington court could constitutionally prosecute a defendant who has already been prosecuted for the same crime by the federal government or in another state.

Admissibility and Suppression of Evidence

Washington has adopted the Federal Rules of Evidence with minor variations. The Washington Rules of evidence generally apply to all actions and proceedings in Washington courts. However, the rules (other than those with respect to privilege, which apply at all stages of all proceedings)

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do not apply to preliminary questions of fact to determine the admissibility of evidence, grand jury proceedings, and other miscellaneous proceedings.

Either party may make a motion for the admission, suppression or exclusion of evidence before the proceeding begins or during trial. A motion is considered pretrial if it occurs before jeopardy has attached. The decision to admit or exclude a particular piece of evidence is made by the court.

The evidence rules bar the admission of any information or item into evidence that is not relevant to resolve the controversy at hand. Evidence that is relevant is admissible, unless otherwise barred by statute, the constitution, court rule, or the rules of evidence. When evidence offered by either party is relevant only if certain fact is established, the court must admit it upon (or subject to) the introduction of evidence sufficient to support a finding of that fact.

The exclusionary rule proscribes the use of evidence in a criminal trial if the evidence was illegally obtained in violation of the defendant's constitutional rights. The rule is typically applied when evidence was obtained in manner qualifying as a search and seizure under the Fourth Amendment to the Federal Constitution.

Appeal and Discretionary Review

The Rules of Appellate Procedure (RAP) and the Rules for Appeal of Decisions of Courts of Limited Jurisdiction (RALJ) identify the decisions of a superior court or court of limited jurisdiction that may be reviewed. Review as a matter of right is called an "appeal." Review by permission of the reviewing court is called "discretionary review."

A party may seek discretionary review of any act of the superior court or court of limited jurisdiction that is not appealable as a matter of right. Discretionary review may be accepted only if the court has committed an obvious or probable error, has departed or sanctioned a lower court's departure from the usual course of judicial procedure in a manner justifying review, or the order involves a controlling question of law for which there is a substantial ground for a difference of opinion, and immediate review of the order may materially advance the ultimate termination of the litigation.

RAP 2.2(b)(2) and RALJ 2.2(c) provide that the state or a local government may appeal a pre-trial order suppressing evidence in a criminal case as a matter of right *if* (1) the trial court expressly finds that the practical effect of the order is to terminate the case, *and* (2) the appeal will not place the defendant in double jeopardy.

Evidence is "material" in a criminal proceeding if it is offered to prove or disprove an element of the charged offense.

Summary of Bill:

The State may appeal, as a matter of right, a decision or order suppressing or excluding evidence if:

- the evidence is a substantial proof of a fact material in the proceeding; and
- the prosecution certifies to the trial court that the appeal is not taken for purpose of delay.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.